

HOUSE BILL 1131

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By: **Delegates O'Donnell, Barve, and Bates**

Introduced and read first time: February 17, 2010

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Education – Maintenance of Effort Waiver – Appeal Process**

3 FOR the purpose of requiring the State Board of Education to inform certain county
4 boards of education of a certain decision; authorizing certain parties to appeal
5 the decision of the State Board to the Office of Administrative Hearings within
6 a certain time frame; requiring the Office of Administrative Hearings to conduct
7 a hearing and issue a decision within a certain time frame and according to
8 certain provisions of law; requiring a certain decision to be based on substantive
9 grounds; providing that the decision of the Office of Administrative Hearings is
10 final; prohibiting the assessment of a certain penalty until the Office of
11 Administrative Hearings has issued a decision; and generally relating to an
12 appeals process for the maintenance of effort requirement for primary and
13 secondary education.

14 BY repealing and reenacting, with amendments,
15 Article – Education
16 Section 5–202(d)
17 Annotated Code of Maryland
18 (2008 Replacement Volume and 2009 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
20 MARYLAND, That the Laws of Maryland read as follows:

21 **Article – Education**
22 5–202.

23 (d) (1) To be eligible to receive the State share of the foundation program:

24 (i) The county governing body shall levy an annual tax
25 sufficient to provide an amount of revenue for elementary and secondary public
26 education purposes equal to the local share of the foundation program; and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (ii) The county governing body shall appropriate local funds to
2 the school operating budget in an amount no less than the product of the county's
3 full-time equivalent enrollment for the current fiscal year and the local appropriation
4 on a per pupil basis for the prior fiscal year.

5 (2) Except as provided in paragraph (3) of this subsection, for purposes
6 of this subsection, the local appropriation on a per pupil basis for the prior fiscal year
7 for a county is derived by dividing the county's highest local appropriation to its school
8 operating budget for the prior fiscal year by the county's full-time equivalent
9 enrollment for the prior fiscal year. For example, the calculation of the foundation aid
10 for fiscal year 2003 shall be based on the highest local appropriation for the school
11 operating budget for a county for fiscal year 2002. Program shifts between a county
12 operating budget and a county school operating budget may not be used to artificially
13 satisfy the requirements of this paragraph.

14 (3) For purposes of this subsection, for fiscal year 1997 and each
15 subsequent fiscal year, the calculation of the county's highest local appropriation to its
16 school operating budget for the prior fiscal year shall exclude:

17 (i) A nonrecurring cost that is supplemental to the regular
18 school operating budget, if the exclusion qualifies under regulations adopted by the
19 State Board; and

20 (ii) A cost of a program that has been shifted from the county
21 school operating budget to the county operating budget.

22 (4) The county board must present satisfactory evidence to the county
23 government that any appropriation under paragraph (3)(i) of this subsection is used
24 only for the purpose designated by the county government in its request for approval.

25 (5) Any appropriation that is not excluded under paragraph (3)(i) of
26 this subsection as a qualifying nonrecurring cost shall be included in calculating the
27 county's highest local appropriation to its school operating budget.

28 (6) Qualifying nonrecurring costs, as defined in regulations adopted by
29 the State Board, shall include but are not limited to:

30 (i) Computer laboratories;

31 (ii) Technology enhancement;

32 (iii) New instructional program start-up costs; and

33 (iv) Books other than classroom textbooks.

1 (7) (i) The provisions of this subsection do not apply to a county if
2 the county is granted a temporary waiver or partial waiver from the provisions by the
3 State Board of Education based on a determination that the county's fiscal condition
4 significantly impedes the county's ability to fund the maintenance of effort
5 requirement.

6 (ii) After a public hearing, the State Board of Education may
7 grant a waiver under this paragraph in accordance with its regulations.

8 (iii) In order to qualify for the waiver under this paragraph for a
9 fiscal year, a county shall make a request for a waiver to the State Board of Education
10 by April 1 of the prior fiscal year.

11 (iv) The State Board of Education shall inform the county **AND**
12 **THE COUNTY BOARD** whether the waiver for a fiscal year is approved or denied in
13 whole or in part by May 15 of the prior fiscal year.

14 (v) If the State Board of Education grants a county a temporary
15 waiver or partial waiver from the provisions of this subsection for any fiscal year, the
16 minimum appropriation of local funds required under this subsection for the county to
17 be eligible to receive the State share of the foundation program for the next fiscal year
18 shall be calculated based on the per pupil local appropriation for the prior fiscal year
19 or the second prior fiscal year, whichever is greater.

20 **(8) (i) 1. A COUNTY GOVERNING BODY OR COUNTY BOARD**
21 **MAY APPEAL TO THE OFFICE OF ADMINISTRATIVE HEARINGS THE DECISION OF**
22 **THE STATE BOARD OF EDUCATION UNDER PARAGRAPH (7) OF THIS**
23 **SUBSECTION.**

24 **2. EXCEPT AS OTHERWISE PROVIDED IN THIS**
25 **PARAGRAPH, THE OFFICE OF ADMINISTRATIVE HEARINGS SHALL CONDUCT A**
26 **HEARING ON EACH APPEAL IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF**
27 **THE STATE GOVERNMENT ARTICLE.**

28 **(ii) AN APPEAL SHALL BE FILED NO LATER THAN 7 DAYS**
29 **AFTER THE COMPLAINANT HAS RECEIVED THE DECISION OF THE STATE BOARD**
30 **OF EDUCATION UNDER PARAGRAPH (7)(IV) OF THIS SUBSECTION.**

31 **(iii) NOTWITHSTANDING ANY OTHER PROVISION OF LAW,**
32 **THE OFFICE OF ADMINISTRATIVE HEARINGS SHALL CONDUCT A HEARING ON**
33 **THE APPEAL WITHIN 14 DAYS AFTER RECEIVING THE WRITTEN REQUEST FOR AN**
34 **APPEAL.**

1 **(IV) THE DECISION OF THE OFFICE OF ADMINISTRATIVE**
2 **HEARINGS SHALL BE MADE ON SUBSTANTIVE GROUNDS BASED ON PARAGRAPH**
3 **(7)(I) OF THIS SUBSECTION.**

4 **(V) NOTWITHSTANDING ANY OTHER PROVISION OF LAW,**
5 **THE OFFICE OF ADMINISTRATIVE HEARINGS SHALL ISSUE TO THE PARTIES A**
6 **WRITTEN DECISION WITHIN 14 DAYS AFTER THE HEARING.**

7 **(VI) NOTWITHSTANDING ANY OTHER PROVISION OF LAW,**
8 **THE DECISION OF THE OFFICE OF ADMINISTRATIVE HEARINGS IS FINAL.**

9 **(VII) A PENALTY MAY NOT BE ASSESSED UNDER § 5-213 OF**
10 **THIS SUBTITLE UNTIL THE OFFICE OF ADMINISTRATIVE HEARINGS HAS ISSUED**
11 **A DECISION.**

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 July 1, 2010.